**RESERVED JUDGMENT**

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Civil Writ Petition No. 207 of 2001 (S/S)**

Prahlad Sharma …… Petitioner

Versus

Vice Chancellor,
Govind Ballabh Pant University,
of Agriculture & Technology,
Pant Nagar, Distt. Udham Singh Nagar
and others ……. Respondents

Mr. Manoj Tiwari, learned counsel for the petitioner.
Mr. Rajendra Dobhal, learned counsel for respondents.

**Hon'ble P.C. Pant, J.**

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought for regularization of his services on the post of Xerox Assistant in the library of the respondent University.

2) Brief facts of the case as stated in the petition are that the G.B. Pant University of Agriculture and Technology (for the sake of brevity 'University') has been constituted under the provisions of U.P. Agricultural Universities Act, 1958, and is an instrumentality of the State Government. The petitioner was initially engaged by the University on daily wages in the year 1987, and in 1989 an experience certificate was also issued by the Assistant Director, Water supply of the University. Subsequently, the petitioner was re-appointed again on daily wages vide order dated 02.11.1990 passed by Deputy Establishment Officer of the University (copy Annexure-2 to the writ petition) and further re-appointed vide order dated 25.04.1991 by the same officer. On January 9, 1992 the

Librarian of the University engaged the petitioner as Xerox Assistant on daily wages. Thereafter, on May 15, 1993 the University Librarian recommended case of the petitioner to allow him to work as Xerox Assistant for further period of six months. On February 22, 1997, the Librarian recommended case of the petitioner for regularization in view of his continuous sufficient service. Meanwhile, the petitioner filed a writ petition No. 438386 of 2001 before the Allahabad High Court for regularization which was disposed of any said Court on 07.11.2000, directing the respondents to dispose of the representation of the petitioner within a month. The petitioner in response thereto made a representation dated 13.11.2000 for regular appointment. The same was rejected by the respondents vide their letter dated 06.02.2001 (copy Annexure-10 to the writ petition), hence this writ petition.

3) The respondents have filed their counter affidavit in which it has been stated that daily wage workers are engaged in view of the exigency of work and as such the petitioner's representation was rightly rejected declining regularization. This fact has not been denied in the counter affidavit that the petitioner was working with the University since 1987 on daily wages. But it is stated that his conduct was not satisfactory. As to the regular appointment on the post of Xerox Assistant the respondents have stated in their counter affidavit that it requires to be filled as per the rules and the petitioner is not entitled to regularization on said post.

4) I heard learned counsel for the parties and perused the affidavits along with the annexures annexed thereto.

5) The short question for consideration before this Court is whether the petitioner is wrongly denied regularization on the

post of Xerox Assistant in the library of the respondent University?

6) Admittedly, the petitioner was engaged on daily wages. It is not denied that he was initially engaged in 1987. Experience certificate dated 07.07.1989 issued by the Assistant Director, Water Supply of the University (copy Annexure-I to the writ petition) shows that in the year 1987-88 the petitioner worked on daily wages in the University and his work was satisfactory. The letter dated 02.11.1990 issued by the Deputy Establishment Officer of the University (copy Annexure- 2 to the writ petition) shows that the petitioner was re-engaged on daily wages at the rate of Rs. 18/- per day for six months in the Water Supply Plant. Another letter dated 25.04.1991 (copy Annexure- 3 to the writ petition) issued by the same officer of the University shows that the petitioner was re-employed w.e.f. 03.05.1991 with the Deputy Director (Administration) of the University. Finally vide order dated 9th January 1992 (copy Annexure- 4 to the writ petition) petitioner was again re-employed for 180 days on daily wages on the same rate of Rs. 18/- per day by the Librarian of the University. The record shows that thereafter the petitioner continuously worked in the University as is clear from the letter dated May 15, 1993 (copy Annexure- 6 to the writ petition) which is a letter sent by the University Librarian to the Deputy Establishment Officer for allowing to work the petitioner for further period of six months and thereafter the letter dated 22.02.1997 (copy Annexure- 7 to the writ petition) by the same Librarian recommending the petitioner's case for regularization to the Establishment Officer and Labour Welfare Officer. It is also not disputed that the writ petition No. 438386 of 2000 was filed by the petitioner and some others for their regularization in the University in response to which the representation dated 13.11.2000 (copy Annexure- 9 to the writ petition) was made by

the petitioner which was rejected by the respondents vide letter dated 06.02.2001 (copy Annexure- 10 to the writ petition) on the ground that the regular post can be filled only as per the rules after advertising the same. It is further alleged in the impugned order that the Government has put a ban on the fresh recruitment. The ground mentioned in the said impugned order appears to be misconceived as the petitioner has not sought any fresh recruitment but regularization of his services on the vacant post.

7) Mr. Rajendra Dobhal, learned counsel for the respondents argued that the petitioner's conduct has not been good as daily labour. He placed reliance on the memo dated 14th March 1996 (copy Annexure C.A. 1 to the counter affidavit) issued by the Librarian to the petitioner for making interpolation in the attendance register and the order dated 17th May 1999 (copy Annexure C.A. 2 to the counter affidavit) by which the petition was ordered to be ceased for one month, and informed not to repeat the act. Perusal of the record shows that later the University Librarian, on September 13, 2000, issued a certificate (copy Annexure- 5 to the writ petition) as under:-

> ***"TO WHOM IT MAY CONCERNED***
>
> *This is to certify that Sri Prahalad Sharma S/o Sri Mahendra Sharma is working as Xerox Assistant on daily wages in the University Library w.e.f. January 10, 1992 till to date. To the best of my knowledge he bears a good moral character and he is a sincere worker.*
>
> *I wish him success in life.*
>
> *Sd/-*
>
> *(S.P. Jain)*
>
> *University Librarian*

8) Apart from the above certificate by subsequent Librarian, the earlier Librarian who has issued letter dated 14th March 1996

(copy C.A. 1 to the counter affidavit), has himself sent a letter dated 22.02.1997 (copy Annexure- 7 to the writ petition) to the Establishment Officer recommending the case of the petitioner for regularization in which it has been reported that like the persons junior to the petitioner have been regularized, his case should also be considered as he is continuously working as Xerox Assistant. Considering these documents the excuse shown by the respondents for non regularization of the petitioner appears to be lame.

9) In view of the above discussions and the reasons, and the length of 17 years of services rendered by the petitioner on daily wages, the writ petition is disposed of with the direction that the petitioner's case for regularization be re-considered within a period of three months by the respondents against the available vacant post, provided the petitioner is otherwise found suitable for the same. No order as to costs.

**(P.C. Pant, J.)**

Dt. 31st August 2004.
H.Negi